

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

ELEAZAR CANTU, JR.

VS.

**STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY**

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C.A. NO. 4:16-cv-3703

DEFENDANT'S NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF SAID COURT:

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant State Farm Mutual Automobile Insurance Company (State Farm") files this Notice of Removal of the present action from the 129th Judicial District Court of Harris County, Texas to the United States District Court for the Southern District of Texas, Houston Division, on the basis of diversity of citizenship and amount in controversy. In connection with this Notice of Removal, State Farm would respectfully show unto the Court as follows:

I. Introduction

1. This lawsuit began on or about August 23, 2016, when Plaintiff Eleazar Cantu, Jr., filed his Original Petition in Cause No. 2016-56273 in the 129th Judicial District Court of Harris County, Texas, styled *Eleazar Cantu, Jr. vs. State Farm Mutual Automobile Insurance Company*. The suit arises from an automobile accident that occurred on May 13, 2016 in Harris County, Texas. Plaintiff seeks to recover uninsured/underinsured motorist benefits from State Farm.

2. State Farm was served with Plaintiff's Original Petition on November 21, 2016.

II. Grounds for Removal

A. Complete Diversity of Citizenship Exists Between the Parties, and the Amount in Controversy Exceeds \$75,000

3. Removal is proper because there is complete diversity of citizenship between the parties, and the alleged amount in controversy exceeds \$75,000, exclusive of interest and costs. *See* 28 U.S.C. § 1332(a)(1).

4. Plaintiff is a resident and citizen of Texas. State Farm was and is incorporated in, and a resident of, the State of Illinois.

5. Plaintiff's Original Petition makes clear throughout that the amount in controversy exceeds \$75,000. Specifically, Plaintiff states that "damages are in excess of \$100,000." (Pl's Orig. Pet., p. 1). Plaintiff further claims that he obtained a judgment of \$65,000 against the underlying tortfeasors and that State Farm "participated in the adjudication of the underlying claims and the entry of judgment." (Pl's Orig. Pet., p. 2). Plaintiff additionally seeks to recover attorney's fees and treble damages in relation to Plaintiff's extra-contractual claims against State Farm. (Pl's Orig. Pet., pgs. 6-7). The amount in controversy, therefore, exceeds \$75,000. *See* 28 U.S.C. § 1332(a)(1).

B. Venue is Proper in This Division and in This District.

6. Plaintiff filed this action in Harris County, Texas. The Houston Division of the Southern District of Texas encompasses Harris County, Texas. *See id.* § 124(b)(2). Thus, this district and division embrace the place where the state court action is pending. *See id.* § 1441(a).

III. Procedural Requirements for Removal

7. State Farm was served on September 12, 2016. This Notice of Removal is being filed on or before October 12, 2016. Accordingly, this Notice of Removal is timely filed within

30 days of when State Farm received Plaintiff's Original Petition and within one year of the commencement of this suit. *See id.* § 1446(b).

8. A copy of this Notice of Removal will be filed with the Harris County District Clerk's office and served on Plaintiff promptly. *See id.* § 1446(d); *see also Nixon v. Wheatley*, 368 F. Supp. 2d 635, 640 (E.D. Tex. 2005).

9. Pursuant to 28 U.S.C. § 1446(a) and Local Rule 81 of the Southern District of Texas, this Notice of Removal is accompanied by the following documents:

- (A) Index of Documents Filed with Removal Action;
- (B) Civil Process Request;
- (C) Case Information Sheet;
- (D) Plaintiff's Original Petition;
- (E) Motion to Transfer Between District Courts, Notice of Submission and Proposed Order;
- (F) Executed Order Transferring Case to Another District Court;
- (G) Civil Process Pick-Up Form;
- (H) Affidavit of Service on Defendant, State Farm;
- (I) Defendant State Farm's Original Answer;
- (J) Defendant State Farm's Demand for Jury Trial;
- (K) Certificate of Written Discovery by State Farm;
- (L) State Court Case Summary/Docket Sheet; and
- (M) List of Attorneys/Parties.

10. The filing fee has been paid to the Clerk.

11. The filing of this notice, along with the filing of the notice in the state court and service of the notice upon Plaintiff's counsel, serves immediately to confer exclusive jurisdiction

of this cause upon this Court, and divests the state court of all jurisdiction over these proceedings and claims.

IV. Prayer

12. State Farm prays that the above-styled action now pending in the 129th Judicial District Court of Harris County, Texas be removed to this Honorable Court pursuant to the Court's diversity jurisdiction, that upon final trial, judgment be rendered that Plaintiff take nothing by his suit against State Farm, and for such other and further relief to which State Farm may be justly entitled.

13. This Notice of Removal is filed subject to and without waiver of any defenses or objections to Plaintiff's Original Petition as allowed by the Federal Rules of Civil Procedure or by any applicable law.

Respectfully submitted,

GERMER PLLC

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By: /s/ Barbara L. Hachenburg

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that service on known Filing Users will be automatically accomplished through the Notice of Electronic Filing. Counsel who are not Filing Users are receiving a true and accurate copy of the foregoing served via United States mail, first-class, postage pre-paid on this 21st day of December, 2016.

/s/ Barbara L. Hachenburg
Barbara L. Hachenburg